

## ADMINISTRATIVE LETTERS

An Administrative Letter is the method by which the Commissioner of Financial Institutions formally communicates with entities regulated by the Bureau of Financial Institutions. Administrative Letters are not regulations or law, but are positions that the Bureau of Financial Institutions has taken on issues affecting financial institutions. Administrative Letters are often issued after the Bureau of Financial Institutions identifies or receives a number of questions or concerns about a particular issue, regulation or law. Administrative Letters provide helpful direction, guidance, instructions, interpretations, or general information.

### REGISTER OF ADMINISTRATIVE LETTERS

Issued by

Bureau of Financial Institutions  
Virginia State Corporation Commission

#### BANKING AND FINANCE

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**ADMINISTRATIVE LETTER BFI-AL- 0201**  
**APPLICATION FOR A BRANCH OFFICE**

1. Any bank or savings institution may apply to the State Corporation Commission for authority to establish a branch office.
2. Authority granted to any bank or savings institution to establish a branch will expire at the end of one year, unless a request for an extension of time is received not less than 45 days nor more than 60 days prior to expiration of the time stated in the certificate of authority to establish the branch. A request for an extension of time must specify the reason(s) for the delay.
3. For good cause, the time within which a branch must be opened for business may be extended for a period not to exceed six months beyond the expiration of the initial one year period authorized for the branch to be opened. Except in unusual circumstances and for good cause shown, a second extension of time will not be granted unless construction of the branch has been started.
4. Where a bank or savings institution has been granted an extension of time for the opening of an approved branch, the State Corporation Commission may elect not to act on an application for an additional branch office until construction of such previously approved branch has been started.

Revised and Reissued July 1, 1999. Original effective date: September 10, 1979.

Reference: §§6.1-39.3 (Banking Act) and 6.1-194.26 (Savings Institutions Act) of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0202**  
**INVESTMENT BY BANKS IN SHARES OF INVESTMENT COMPANIES**

Chapter 297 of the 1987 Acts of Assembly amends Virginia Code §6.1-60.1 to provide (among other things) that the general prohibition against a bank's investing in corporate stock shall not prevent any bank "from acquiring, owning and holding, subject to such conditions as the Commissioner may prescribe, shares of investment companies." This circular prescribes the conditions governing investment in shares of investment companies (or, mutual funds) by state banks.

1. The investment portfolio of the investment company must consist solely and exclusively of instruments and obligations in which the bank could invest directly for its own portfolio.
2. Purchases of such shares are limited to the same extent that direct investment in any particular asset in the investment company's portfolio would be limited by applicable law or regulation.
3. The bank as shareholder must have legally enforceable, undivided interest in the underlying assets of the investment company, which interest is proportionate to the bank's ownership in the company.
4. The bank as shareholder must be shielded absolutely from direct or indirect liability for any act or obligation of the investment company.
5. The investment company must be registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933.
6. Where the investment company engages in such activities as transactions in options, futures, puts or calls, etc., shares purchased by the bank must be treated as if the bank were engaging in such transactions directly and such transactions must be reported and accounted for accordingly.
7. The bank's board of directors must have established and formally approved an investment policy that specifically provides for investment in investment companies, and that requires specific prior approval by the board of each initial investment in the shares of any company. Thereafter, each additional investment in the shares of that investment company must be reviewed and approved by the board, and such review and approval must be reflected in official board minutes. It is the board's sole responsibility to determine, with the advice of counsel if necessary, whether the shares of any particular investment company meet all established criteria, legal and otherwise, before authorizing

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investment in those shares. The Bureau will not provide a prior determination of the eligibility of the shares of any specific company for investment.

8. Prior to any investment in investment companies, adequately detailed procedures, standards and controls for managing such investments must be established.
9. Not less frequently than quarterly, a detailed review of all holdings of investment companies' shares must be conducted by the board, and the board must further review the extent to which the board's policies and procedures are effective.

The board of directors must specifically consider and make adequate provision for the effect of investment in investment companies' shares upon the bank's present and future liquidity needs. The marketability of such shares and their acceptability as security for public deposits and for other purposes requires the full understanding and careful attention of the board. Careful attention to sales fees and accounting for such fees when shares are bought and sold is also necessary.

It is strongly emphasized that the decision to invest in shares of one or more investment companies is the absolute and sole responsibility of each bank's board of directors. Considerations of safety and soundness of an institution must not be subordinated to perceived opportunities for income.

Compliance with the foregoing conditions and requirements will be reviewed during examinations.

Issued by the Commissioner of Financial Institutions, August 10, 1987, as Circular 1-87.

Reference: §6.1-60.1 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0203**  
**LOANS SECURED BY STOCK OF**  
**FINANCIAL INSTITUTIONS HOLDING COMPANIES**

Section 6.1-60.1 of the Code of Virginia provides, in part, that a bank may not make loans secured by its own stock. This prohibition does not extend expressly to loans secured by shares of a bank's holding company. Where no substantial market for a holding company's stock exists, however, risks similar to those which underlie the statutory prohibition may be involved. It appears that such instances are less prevalent now than in 1987, when this issue was last addressed.

Accordingly, the Bureau of Financial Institutions deems it an unsafe and unsound practice for a bank that has been in existence for less than five years to make a loan on the security of shares of its own holding company without prior written approval by the Bureau. Otherwise, lending on the security of shares of a bank's holding company will not be considered an unsound practice. This ruling does not affect the ability of a bank to take such holding company shares to prevent or reduce loss on a debt previously contracted.

Code §§6.1-194.69 and 6.1-194.136 do not permit state savings institutions to make loans secured by shares of such institutions or their holding companies. Moreover, no such authority has been granted pursuant to subsection 15 of §6.1-194.69 or subsection 14 of §6.1-194.136. Therefore, instances of such lending will be cited as violations.

Statutory references: §§6.1-60.1, 6.1-194.69 and 6.1-194.136 of the Code of Virginia

Revised and reissued January 22, 1996.

**ADMINISTRATIVE LETTER BFI-AL-0204**  
**INVESTMENT IN**  
**COMMUNITY DEVELOPMENT CORPORATIONS**

Chapter 464 of the 1988 Acts of Assembly amended Virginia Code §6.1-60.1 to provide that the general prohibition against investment by a State bank in corporate stock shall not prevent any bank “...from acquiring, owning and holding, subject to such conditions as the Commissioner may prescribe, shares of stock in a community development corporation.”

Under that authority, a State bank may invest in a community development corporation (CDC), provided:<sup>1</sup>

1. The CDC is, or is to be, organized and operated for predominately civic, community or public purposes, including (but not necessarily limited to) development or rehabilitation of housing or other property in low-income or moderate-income areas in designated Community Development Areas or in Urban Development Action Grant designated communities;
2. A bank’s investment in any one CDC may not exceed two percent of the bank’s capital and surplus (as defined in Code §6.1-61) and its total investment in all CDC’s may not exceed five percent of its capital and surplus;
3. Investments in CDC’s are to be carried on a bank’s books as “other assets”;
4. As a matter of policy, the Board of Directors of a CDC should include representatives of the residential, business and government sectors of the community to be affected by the CDC;
5. Each bank investing in a CDC must have on file an investment proposal containing:

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<sup>1</sup> (1) These conditions apply only to investment in the stock (equity) of community development corporations. State banks have authority to donate funds to community organizations (Code §13.1-627A.13), or to lend to such organizations subject to the provisions of Code §6.1-61. However, it is noted particularly that, unlike general business corporations in Virginia, State banks are not empowered by law to enter into partnerships, joint ventures, or other associations, regardless of the purpose of such an organization (§13.1-627B).

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- (a) A description of the CDC, including name, state of incorporation, registered agent, total capitalizations, etc.
  - (b) A statement of the purpose of the CDC, including a description of how the purpose conforms to the requirement that it be predominately civic, community or public in nature;
  - (c) A list of the Board of Directors of the CDC, showing principal occupation and how the individual will satisfy the requirement for representation of the residential, business or government sectors of the community;
  - (d) A list of advisory committee members (if any) and their involvement or participation in the community;
  - (e) The nature and extent of the banks investment, contribution and other participation;
  - (f) A description of the CDC's target areas, projects and beneficiaries.
6. No bank may invest in a CDC if the activity of or transaction by the CDC will result in improvement or enhancement of the value of property in which a bank insider (officer, director, employee or a member of such individual's immediate family) has an interest.

Every investment in a CDC by a bank will be reviewed by the Bureau's examiners for asset quality, risk characteristics and adherence to the provisions of Code §6.1-60.1(15) and this Circular. The management and Board of Directors of the bank are responsible for compliance with applicable laws and regulations.

Issued by the Commissioner of Financial Institutions September 8, 1988 as Circular 1-88.

Reference: §6.1-60.1 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0205**  
**SECURITIES RATING SERVICES**

Ratings of securities published by any of the nationally recognized rating services (Moody's, Standard & Poor's, Fitch's, etc.) are acceptable for use in examining a bank's investment portfolio, where such service is used by the bank.

Every bank should, as a matter of prudence and as a basis for investment decisions, have available for analysis sufficient credit information to enable an informed appraisal of any non-rated security. It is also noted that rating by an investment rating service does not relieve a bank's board of directors of responsibility for soundness of the investment portfolio.

Issued by the Commissioner of Financial Institutions June 21, 1978, as Circular 1-78.

Reference §6.1-61 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0206**  
**LOANS IN VIOLATION OF SECTION 6.1-61**

The entire amount of a loan or other transaction which, at the time such loan or transaction is made, results in an aggregate obligation in excess of the bank's lending limit, is to be extended, rather than only that portion in excess of the legal limit. The lending limit on the date when the violation occurred is to be calculated and shown in the examination report as well as the lending limit and the balance of the obligation on the date of examination.

The foregoing procedure recognizes that a transaction which results in violation of the law is illegal in its entirety, rather than only to some lesser degree related to the amount by which the legal lending limit may have been exceeded. The emphasis here should not be, and is not, placed upon some concept of degree of violation of law, since violations are not believed to occur by degrees. If a transaction violates the law, the amount of the transaction is of no consequence.

Issued by the Commissioner of Financial Institutions December 16, 1977, as Circular 3-77.

Reference: §6.1-61 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL- 0207**  
**OBLIGATIONS SUBJECT TO THE LIMITS SPECIFIED**

For legal lending limit purposes, §6.1-61 of the Code of Virginia defines “obligations” as the direct liability of the maker or acceptor of paper discounted with or sold to a bank and the liability of an endorser, drawer or guarantor who obtains a loan from or discounts paper with or sells paper under his guarantee to a bank. With respect to endorsers, the effect of this section is to define the obligation of an endorser or guarantor subject to the bank’s lending limit as those instances in which the endorser or guarantor obtains a loan from, discounts paper with or sells paper under his guarantee to the bank. Stated differently, the bank’s lending limit applies to the obligation of an endorser or guarantor only when the endorser or guarantor obtains the proceeds of a loan, directly or indirectly. The statute provides further that the obligations of a corporation must be combined with the obligations of subsidiaries in which it owns or controls a majority interest.

The foregoing incorporates amendments to §6.1-61 made by the 1978 Session of the legislature. Of particular interest is the definition of obligations of endorsers or guarantors, for purposes of the bank’s lending limit. Please be guided accordingly.

Issued by the Commissioner of Financial Institutions November 1, 1978, as Circular 2-78.

Reference: §6.1-61 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0208**  
**EXCEPTIONS TO LENDING LIMITS FOR STATE-CHARTERED BANKS**

Obligations as endorser or guarantor of installment consumer paper are not subject to lending limits, provided all conditions and requirements of §6.1-61-A(7) are met. For purposes of this Section, an unconditional repurchase agreement is considered to create a liability of the seller or discountor of installment consumer paper to the same degree as an endorsement without recourse or guarantee. A condition reasonably within the power of the bank to perform, such as repossession of a consumer product covered by a defaulted obligation, will not be considered to make conditional an otherwise unconditional agreement.

Certification pursuant to the foregoing section is necessary in all cases of paper purchased under endorsement, guarantee or repurchase agreement, if the obligation of the seller of the paper is to be excepted from the lending limit.

Section 6.1-61-A(2) can be applied only to obligations arising out of the discount of commercial or business paper. Installment consumer paper may not be sold or discounted without limit under the provisions of this exception.

Issued by the Commissioner of Financial Institutions December 16, 1977, as Circular 2-77.

Reference: §§6.1-61-A(2) and 6.1-61-A(7) of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0209**  
**RIGHT OF OFFSET BY HOLDERS OF SUBORDINATED BANK DEBT**

A recent ruling by a United States District Court has allowed the holder of a subordinated note, issued by a bank which subsequently had failed, to offset against that note funds of the closed bank which the lending bank was holding in a correspondent account.

In the specific instance cited, the subordinated capital note contained the usual subordination language and stated that payments on the note were subject to the provisions of Section 18(i) of the FDI Act. However, the note agreement also contained a clause stating: "Nothing in this agreement shall be deemed any waiver or prohibition of Bank's right of Banker's lien or offset." This clause was deemed to supersede the subordination provisions and allow the lending bank to offset, or apply, the deposit funds held against the outstanding note of the failed bank.

It is the Bureau's position that subordinated debt instruments which contain language permitting the holder to offset funds on deposit against the obligation do not qualify as capital for purposes of §6.1-61 and, further, may result in violation of §6.1-78, et seq. of the Code.

If a subordinated debt instrument is held by a bank which does not hold a deposit account against which the obligation could be offset, care should be taken in establishing subsequent deposit relationship.

The Bureau's examiners have been instructed to cite the existence of subordinated debt with this characteristic held in conjunction with deposit accounts of the issuing bank as violations of law.

Issued by the Commissioner of Financial Institutions November 9, 1981, as Circular 3-81.

Reference: §§6.1-61 and 6.1-78 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0210**  
**LOANS SECURED BY REAL ESTATE**

1. General Statement

The need for, or usefulness of, an appraisal of real estate which is to be conveyed as security for a loan is, in the first place, dictated by practical considerations - not by law. Therefore, the responsibility for determining when an appraisal is called for in connection with a loan rests in the sound discretion of bank management. Prudent lending practice may call for an appraisal of real estate security regardless of any legal requirement.

2. Amount of Loan Requiring Appraisal

When a bank makes a loan secured by real estate within the meaning of Virginia Code §§6.1-63 and 6.1-65 (hereinafter referred to as a “real estate loan”) the bank is required by law to have a written appraisal, if the amount of the loan is greater than an amount to be established by the Commissioner of Financial Institutions as provided in Subsection B. of §6.1-63. Also, home improvement loans (as defined in §6.1-66), even though secured by a real estate lien, may not be considered real estate loans, if they meet several criteria, one of which is that the amount of the loan not exceed an amount similarly established.\*

Therefore, pursuant to a provision of Subsection B. of Va. Code §6.1-63, having considered the appraisal requirements imposed on state banks under applicable federal regulations, the Commissioner hereby establishes these real estate loan amounts:

- \$250,000 - Real estate loans of this amount and more are required to be supported by an appraisal. (§6.1-63)
- \$250,000 - Home improvement loans below this amount may not be “real estate loans,” if certain other conditions are met. (§6.1-66)

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\*Va. Code §6.1-63 itself, and §§6.1-64, 6.1-65, and 6.1-66 set forth a series of instances where appraisals may or may not be required in support of various loans and categories of loans that are secured by real estate.

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3. Date of Appraisal

While the law sets no requirement for the date of an appraisal in relation to the date of making the loan, it is reasonable to expect that an appraisal be current and that it support the value of the real-estate security upon which the bank relies in making the loan. Therefore, while no arbitrary time limit is set, it is required that an appraisal in support of a real estate loan be made within a reasonable time prior to the date of the loan, and that the appraisal be related specifically to the loan rather than to another transaction.

4. Interests Excluded from the Term "Real Estate"

For purposes of the requirement of an appraisal in connection with real estate loans, the Bureau will not construe the term "real estate" as including mineral rights, timber rights, or growing crops.

5. Appraisal According to Standards of Insurers or Guarantors

Virginia law requires only that real estate appraisals be in writing and that they be done by experienced persons competent to appraise real estate in the place where it is located. In an approach which differs from that taken by recent federal law and regulation in this area, the Banking Act has not undertaken to prescribe a standard or to establish an approved class of appraisers. Therefore it appears there will be no conflict between the Banking Act and this ruling, on the one hand, and the appraisal standards of various insuring or guaranteeing agencies.

Revised and reissued March 21, 1994, August 8, 2005.

Reference: §6.1-63 through §6.1-66 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0212  
OUTSIDE AUDITOR ACCESS TO VIRGINIA  
EXAMINATION REPORTS**

**COPIES OF EXAMINATION REPORTS**

Virginia Code §§6.1-90 and 6.1-194.79 provide, in pertinent part, that Boards of Directors of banks and savings institutions may, by resolution, permit reports of examination made by the Bureau of Financial Institutions to be inspected in the institution by such persons as are specified in the resolution. (Emphasis added). In addition, Section 931 of FIRREA requires an insured depository institution to furnish copies of examination reports to its outside auditors. Although the provision in Virginia law for such inspections might be construed as more restrictive, no actual conflict exists, since FIRREA does not require that outside auditors be permitted to remove copies of examination reports from the institutions' premises. Confining review of Bureau examination reports to the premises of the institution is not likely to obstruct or impair the completion of an audit.

**EXIT INTERVIEWS AND MEETINGS**

The federal bank and thrift regulatory agencies issued a policy statement on July 23, 1992, providing guidelines to depository institutions for furnishing information to external auditors and for meetings between external auditors and examiners. While the Bureau is not bound by these guidelines, their application to banks and savings institutions under examination must be recognized and examiners should respect arrangements made for the attendance of outside auditors at meetings where the results of an examination by a federal agency are to be discussed. However, in the case of independent examinations by the Bureau, attendance by outside auditors at exit interviews or meetings with management may be restricted if the examiner concludes that communication might be impaired by the presence of auditors or other persons.

The absolute necessity for preserving the confidentiality of information in examination reports is strongly emphasized. It may be useful to remind outside auditors that the unauthorized disclosure of confidential supervisory information may be grounds for civil and criminal charges under both State and federal law.

Originally issued by the Commissioner of Financial Institutions December 19, 1990 and revised and reissued August 20, 1992 and September 30, 2002.

This Administrative Ruling was previously identified as BFI-AL-0212.1.

Reference: Virginia Code §§6.1-90 and 6.1-194.79

**ADMINISTRATIVE LETTER BFI-AL-0214  
RESPONSIBILITY OF DIRECTORS  
FOR LEGAL LENDING LIMIT VIOLATIONS**

The concluding paragraph of Virginia Code §6.1-61 D provides:

All loans made by a bank in excess of fifteen percent of its capital and surplus shall be approved by the board of directors or the executive committee of the bank by resolution recorded in the minute book.

Except in instances where a director records a negative vote on the approval of a loan creating a legal lending limit violation, the board, jointly and severally, may be held responsible for any loss the bank may suffer on any loan made to a borrower creating a violation of the bank's legal lending limit.

In some instances, lending limits reduced by operating losses may cause existing loans, which were legal when made, to exceed the current limit. Such loans will be reviewed on a case-by-case basis during examinations. Directors of a new institution should anticipate a reduced legal lending limit based on projected initial losses.

Issued by the Commissioner of Financial Institutions May 7, 1991.

Reference: §6.1-61 D of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0215**  
**BANK-OWNED LIFE INSURANCE**

Pursuant to §§ 6.1-6, 6.1-11, 13.1-627(A)(14), and 13.1-627(A)(15) of the Code of Virginia, state-chartered banks are permitted to purchase bank-owned life insurance (“BOLI”). BOLI purchases must adhere to general principles of safety and soundness. A bank should complete a thorough analysis before purchasing material amounts of BOLI. The purchase of cash value life insurance is a long-term, illiquid, nonamortizing, and unsecured obligation of the insurance carrier. As such, it subjects the policyholder to credit, liquidity, and interest rate risks. Banks holding life insurance in a manner inconsistent with safe and sound banking practices may be subject to supervisory action.

Consistent with prudent risk management practices, a bank must limit its purchase of life insurance from any one issuer to 15 percent of its capital, surplus, and undivided profits less goodwill (do not include loan loss reserves or net unrealized FAS 115 gains or losses). Furthermore, the Bureau of Financial Institutions (“Bureau”) will generally consider a concentration to exist when a bank’s aggregate purchase exceeds 25 percent of its capital, surplus, and undivided profits. Banks should not automatically assume that a concentration level as high as 25 percent is always appropriate. The Bureau will consider exceptions to these purchase limitations on a case-by-case basis. Any exceptions to the applicable limitations require the prior written approval of the Bureau.

At a minimum, pre-purchase analysis should include consideration of the following: (1) determination of the need for insurance; (2) quantifying the amount of insurance needed; (3) vendor selection; (4) carrier selection; (5) review the characteristics of the available insurance products; (6) analyze the benefits of BOLI; (7) determine the reasonableness of compensation provided to the insured employee if the insurance results in additional compensation; (8) analyze the associated risks and the bank’s ability to monitor and respond to those risks; (9) evaluate alternatives; and (10) document decision. The board may delegate decision-making authority related to purchases of life insurance to management; however, the board remains responsible for ensuring that such purchases are consistent with safe and sound banking practices. Bank management and the board of directors cannot rely solely on a third-party analysis of the benefits of BOLI such as the one that a vendor or carrier of the product may prepare. A review of third-party analyses should include a comparison of various products and purchase alternatives, be well-documented, and be approved by the board of directors prior to any BOLI purchase.

In addition to the foregoing, a bank must evaluate the financial condition of the insurance company before purchasing a life insurance policy. The bank should continue to monitor its condition while the policy is in force.

Purchases of life insurance policies entered into before the date of this ruling are provided a “safe harbor” if the following three conditions are met: (1) the policies are beneficial to the conduct of the bank’s business; (2) the policies do not threaten the safety and soundness of the bank; and (3) the policies do not represent insider abuse or violate other laws, regulations, or rulings. If these conditions are met, no further action by the bank is needed. However, if any of the three conditions are not met, the Bureau may require corrective action at any time during the

bank's ownership or while it has a beneficial interest in a policy. Such determinations will be made on a case-by-case basis.

Pursuant to § 38.2-302(A)(3) of the Code of Virginia, any bank purchasing BOLI must provide the insured employee(s) with notice in writing that such insurance has been purchased, the amount of such coverage, and to whom benefits are payable in the event of the employee's death.

For additional detail and guidance on BOLI, you may refer to Section 250, Appendix A of the Thrift Activities Regulatory Handbook published by the Office of Thrift Supervision.

Revised and reissued April 1, 2004. Original effective date August 30, 2002.

Reference: §§ 6.1-6, 6.1-11, 13.1-627(A)(14), 13.1-627(A)(15), and 38.2-302(A)(3) of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL- 0201**  
**APPLICATION FOR A BRANCH OFFICE**

1. Any bank or savings institution may apply to the State Corporation Commission for authority to establish a branch office.
2. Authority granted to any bank or savings institution to establish a branch will expire at the end of one year, unless a request for an extension of time is received not less than 45 days nor more than 60 days prior to expiration of the time stated in the certificate of authority to establish the branch. A request for an extension of time must specify the reason(s) for the delay.
3. For good cause, the time within which a branch must be opened for business may be extended for a period not to exceed six months beyond the expiration of the initial one year period authorized for the branch to be opened. Except in unusual circumstances and for good cause shown, a second extension of time will not be granted unless construction of the branch has been started.
4. Where a bank or savings institution has been granted an extension of time for the opening of an approved branch, the State Corporation Commission may elect not to act on an application for an additional branch office until construction of such previously approved branch has been started.

Reissued by the Commissioner of Financial Institutions February 27, 1991. Original effective date: September 10, 1979.

Reference: §§6.1-39.3 (Banking Act) and 6.1-194.26 (Savings Institutions Act) of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0203**  
**LOANS SECURED BY STOCK OF**  
**FINANCIAL INSTITUTIONS HOLDING COMPANIES**

Section 6.1-60.1 of the Code of Virginia provides, in part, that a bank may not make loans secured by its own stock. This prohibition does not extend expressly to loans secured by shares of a bank's holding company. Where no substantial market for a holding company's stock exists, however, risks similar to those which underlie the statutory prohibition may be involved. It appears that such instances are less prevalent now than in 1987, when this issue was last addressed.

Accordingly, the Bureau of Financial Institutions deems it an unsafe and unsound practice for a bank that has been in existence for less than five years to make a loan on the security of shares of its own holding company without prior written approval by the Bureau. Otherwise, lending on the security of shares of a bank's holding company will not be considered an unsound practice. This ruling does not affect the ability of a bank to take such holding company shares to prevent or reduce loss on a debt previously contracted.

Code §§6.1-194.69 and 6.1-194.136 do not permit state savings institutions to make loans secured by shares of such institutions or their holding companies. Moreover, no such authority has been granted pursuant to subsection 15 of §6.1-194.69 or subsection 14 of §6.1-194.136. Therefore, instances of such lending will be cited as violations.

Statutory references: §§6.1-60.1, 6.1-194.69 and 6.1-194.136 of the Code of Virginia

Effective date: January 22, 1996

**ADMINISTRATIVE LETTER BFI-AL-0212**  
**OUTSIDE AUDITOR ACCESS TO VIRGINIA**  
**EXAMINATION REPORTS**

COPIES OF EXAMINATION REPORTS

Virginia Code §§6.1-90 and 6.1-194.79 provide, in pertinent part, that Boards of Directors of banks and savings institutions may, by resolution, permit reports of examination made by the Bureau of Financial Institutions to be inspected in the institution by such persons as are specified in the resolution. (Emphasis added). In addition, Section 931 of FIRREA requires an insured depository institution to furnish copies of examination reports to its outside auditors. Although the provision in Virginia law for such inspections might be construed as more restrictive, no actual conflict exists, since FIRREA does not require that outside auditors be permitted to remove copies of examination reports from the institutions' premises. Confining review of Bureau examination reports to the premises of the institution is not likely to obstruct or impair the completion of an audit.

EXIT INTERVIEWS AND MEETINGS

The federal bank and thrift regulatory agencies issued a policy statement on July 23, 1992, providing guidelines to depository institutions for furnishing information to external auditors and for meetings between external auditors and examiners. While the Bureau is not bound by these guidelines, their application to banks and savings institutions under examination must be recognized and examiners should respect arrangements made for the attendance of outside auditors at meetings where the results of an examination by a federal agency are to be discussed. However, in the case of independent examinations by the Bureau, attendance by outside auditors at exit interviews or meetings with management may be restricted if the examiner concludes that communication might be impaired by the presence of auditors or other persons.

The absolute necessity for preserving the confidentiality of information in examination reports is strongly emphasized. It may be useful to remind outside auditors that the unauthorized disclosure of confidential supervisory information may be grounds for civil and criminal charges under both State and federal law.

Originally issued by the Commissioner of Financial Institutions December 19, 1990 and revised and reissued August 20, 1992 and September 30, 2002.

This Administrative Ruling was previously identified as BFI-AL-0212.

Reference: Virginia Code §§6.1-90 and 6.1-194.79

**ADMINISTRATIVE LETTER BFI-AL-0301**  
**INVESTMENT IN CAPITAL STOCK OF USL SAVINGS INSTITUTIONS**  
**INSURANCE GROUP, LTD.**

USL Savings Institutions Insurance Group, Ltd., (the "Company") was formed for the primary purpose of owning and operating Savings Institutions Insurance Company (the "Subsidiary"), which expects to be licensed to operate as an insurance company under the provisions of the laws of Illinois and to begin operations by March 1, 1987. The Subsidiary proposes to provide reinsurance for certain directors and officers liability and blanket bond risks for institutions which hold shares in the Company. It is understood that the Subsidiary intends to enter into contractual arrangements with Virginia Surety Company, Inc., ("Virginia Surety"), pursuant to which the Subsidiary will reinsure portions of risks under directors and officers liability and blanket bond insurance policies issued by Virginia Surety.

Shares of common stock in the Company are offered to certain savings institutions which will thereupon become eligible to apply for the insurance coverage to be offered. The Bureau of Financial Institutions has been asked whether shares of stock issued by the Company may be purchased by Virginia savings institutions.

Section 6.1-194.69(15) of the Virginia Code authorizes state associations to invest in obligations, instruments or investments which are specifically approved by the Commissioner of Financial Institutions. Section 6.1-194.4 of the Code grants savings institutions the power to "...become a member of, deal with, maintain reserves or deposits with, or make reasonable payments...to any organization...to the extent that such organization...assists in furthering or facilitating the institution's purposes, powers, services or community responsibilities...".

There is ample evidence that directors and officers liability and blanket bond insurance coverage has become difficult and expensive for savings institutions to obtain. The program to be offered by the Company and its Subsidiary appears to be directed toward making such insurance coverage more readily available. It is clear that the absence of reasonably adequate insurance coverage has a potentially detrimental effect upon a savings institution's purposes and operation and its ability to provide services and meet its community responsibilities. The insurance program in question will tend to reduce the risks to which an institution might otherwise be exposed as a result of insufficient insurance coverage.

In view of these circumstances, shares of common stock in USL Savings Institutions Insurance Group, Ltd., are hereby approved for investment by Virginia savings institutions in accordance with the schedule of maximum investment requirements, based upon total asset size, incorporated in the January 7, 1987 Prospectus issued by the Company. This approval will continue so long as the Company and its Subsidiary are engaged in the business of reinsuring directors and officers liability and blanket bond risks relating to savings institutions.

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Each Virginia savings institution which invests in these shares is required to inform the Bureau of Financial Institutions promptly, in writing, of the number of shares purchased, the price paid and, upon issuance, the kinds and amounts of insurance coverage obtained.

Issued by the Commissioner of Financial Institutions February 12, 1987, as Circular 1-87.

Reference: §§6.1-194.4 and 6.1-194.69(15)

**ADMINISTRATIVE LETTER BFI-AL-0303**  
**INVESTMENT BY VIRGINIA SAVINGS INSTITUTIONS IN**  
**SHARES OF OPEN-END MANAGEMENT INVESTMENT COMPANIES**

Section 6.1-194.69(14) of the Code of Virginia provides, in part, that the assets of a State Association may be invested in shares in open-end management investment companies. In consideration of the potential risk characteristics which such shares may exhibit, careful attention to reasonable standards in their acquisition is warranted. During examinations, investment company shares will be reviewed to determine whether the following conditions are met:

1. The investment portfolio of the investment company must consist solely and exclusively of instruments and obligations in which the Association could invest directly for its own portfolio.
2. Purchases of such shares are limited to the same extent that direct investment in any particular asset in the investment company's portfolio would be limited by applicable law or regulation.
3. The Association as shareholders must have a legally enforceable, undivided interest in the underlying assets of the investment company, which interest is proportionate to the associations ownership in the company.
4. The Association as shareholder must be shielded absolutely from direct or indirect liability for any act or obligation of the investment company.
5. The investment company must be registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933.
6. Where the investment company engages in such activities as transactions in options, futures, puts or calls, etc., shares purchased by the Association must be treated as if the Association were engaging in such transactions directly and such transactions must be reported and accounted for accordingly.
7. The Association's board of directors must have established and formally approved an investment policy that specifically provides for investment in investment companies, and that requires specific prior approval by the board of each initial investment in the shares of any company. Thereafter, each additional investment in the shares of that investment company must be reported to the board and reflected in official board minutes. It is the board's sole responsibility to determine, with the advice of counsel if necessary, whether the shares of any

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particular investment company meet all established criteria, legal and otherwise, before authorizing investment in those shares. The Bureau will not provide a prior determination of the eligibility of the shares of any specific company for investment.

8. Prior to any investment in investment companies, adequately detailed procedures, standards and controls for managing such investments must be established.
9. Not less frequently than quarterly, a detailed review of all holdings of investment companies' shares must be conducted by the board, and the board must further review the extent to which the board's policies and procedures are effective.

The board of directors of an association must specifically consider and make adequate provision for the effect of investment in investment company shares upon the association's present and future liquidity needs. The marketability of such shares and their acceptability as security for public deposits and for other purposes requires the full understanding and careful attention of the board. Careful attention to sales fees and accounting for such fees when shares are bought and sold is also necessary.

It is emphasized strongly that the decision to invest in shares of one or more investment companies is the absolute and sole responsibility of each association's board of directors. Considerations of safety and soundness of an institution must take precedence over perceived opportunities for income.

Failure to meet the foregoing conditions may result in classification of the investment in whole or in part, as substandard, doubtful or loss and may be deemed to be an unsafe and unsound practice.

Issued by the Commissioner of Financial Institutions August 12, 1987, as Circular 2-87.

Reference: §6.1-194.69(14) of the Code of Virginia.

**ADMINISTRATIVE LETTER BFI-AL-0401**  
**INVESTMENT OF FUNDS**  
**BY CREDIT UNIONS**

Section 6.1-225.57 of the Code of Virginia lists the investments that are authorized by law for credit unions chartered under the Virginia Credit Union Act, Chapter 4.01, Title 6.1 of the Code of Virginia.<sup>1</sup>

**1. INVESTMENT IN GOVERNMENT-ISSUED SECURITIES**

Subsections 6 and 7 of § 6.1-225.57 authorize investment in certain government-issued securities, i. e., (1) obligations of, and securities fully guaranteed by, the United States, and (2) obligations of Virginia and its political subdivisions.

The Bureau will treat this authority as equivalent to that given to Virginia State banks and savings institutions. (For a description see §6.1-61(5), §6.1-194.69, Subsection 5, and §6.1-194.136, Subsection 3, which apply to state banks, savings and loan associations and savings banks, respectively.)

**2. OTHER INVESTMENTS – REGISTERED INVESTMENT COMPANIES,  
COLLECTIVE INVESTMENT FUNDS and COMMON TRUST FUNDS**

In addition to the investments authorized by Subsections 1 through 7 and 9 through 12 of §6.1-225.57 of the Code, credit unions may invest in a registered investment company, collective investment company, or common trust fund (as defined below), provided the registered investment company, collective investment fund or common trust fund itself is restricted to investments and investment transactions that are permissible for state credit unions.<sup>2</sup>

A registered investment company is an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a). Examples of registered investment companies are mutual funds and unit investment trusts.

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<sup>1</sup> This investment authority is apart from, and in addition to, the authority to make loans (as given in Article 10, §§6.1-225.51 through 6.1-225.56, of the Act).

<sup>2</sup>Subsection 8 of §6.1-225.57 authorizes investment in “such stock”, securities, obligations, or other investments as may be approved from time to time by the [State Corporation ] Commission; . . .” The Commission has delegated to the Commissioner of Financial Institutions, the authority to approve other investments for credit unions. See 10VAC5-10-10, Paragraph No.20.

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A collective investment fund is a fund maintained by a national bank under 12 CFR, Part 9.18. A common trust fund is a fund maintained by a state bank under §6.1-30.1, et seq., of the Code of Virginia.

**3. GENERAL STATEMENT-INVESTMENT POLICIES AND PROCEDURES**

A credit union will be required to carry out the investing of credit union funds in accordance with policies and procedures approved by the board of directors of the credit union. Such policies and procedures – as well as the investments and transactions themselves – are subject to review on examination by the Bureau. Inadequate policies and procedures, transaction errors and improper investments may result in examiner criticism, an investment's being classified substandard, doubtful or loss, and in other supervisory action.

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Reissued by the Commissioner of Financial Institutions May 17, 1999. Replaces prior rulings dated December 15, 1990, and January 4, 1988 (Circular 1-88).

Reference: §6.1-225.57 of the Code of Virginia.

**ADMINISTRATIVE LETTER BFI-AL-0601**  
**SALES OF AUTOMOBILE CLUB MEMBERSHIPS**

In 1990 the Bureau reviewed its authorizations, pursuant to §6.1-267 of the Code of Virginia, for various licensees to make loans under the Consumer Finance Act in offices where the business of selling automobile club memberships is also conducted.

The purpose of §6.1-267 is different from that of Chapter 3.1, “Automobile Clubs”, of Title 13.1 of the Code, which is administered by the Commission’s Bureau of Insurance. So, licensing of an “automobile club” for sale in Virginia pursuant to Chapter 3.1 does not automatically mean that the club may be sold in consumer finance offices. A notification to this Bureau would be necessary prior to engaging in this other business.

Originally issued by the Commissioner of Financial Institutions November 21, 1990. Revised and reissued August 3, 1998 and September 30, 2002.

Reference: §6.1-267 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0701**  
**JUDGMENT RATE OF INTEREST**

Effective July 1, 1991, Section 6.1-330.54 of the Code of Virginia provides that the interest rate on an obligation upon which judgment has been obtained shall be an annual rate of nine percent. A money judgment entered in an action arising from a contract shall carry interest at the rate lawfully charged on such contract, or at nine percent annually whichever is higher.

It is the position of the Bureau that interest may be charged only on the amount for which judgment is granted and that no other amount may be added, such as residual unearned interest, not included in the judgment. This prohibition applies to both direct loans and installment sales contracts purchased by licensees. Examiners will cite instances of duplication of interest charges on judgments as violations of law.

Originally issued by the Commissioner of Financial Institutions December 9, 1983. Revised and reissued September 30, 2002.

Reference: §6.1-330.54 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0702  
CHARGES ON SUBORDINATE MORTGAGE LOANS  
BY CERTAIN LENDERS**

Virginia Code §6.1-330.71 allows certain lenders making subordinate mortgage loans on which interest is charged on the basis of a simple annual rate to also charge a 5% “loan fee” (referred to as “points”).

1. Such lenders may charge interest on a loan amount which includes points only if points charged are financed.
2. Points charged on such loans may not exceed 5% of the principal loan amount, which is an amount that does not itself include any points or fees.
3. Overcharges resulting from violation of this Ruling must be reimbursed to the borrower.

Issued by the Commissioner of Financial Institutions April 6, 1990, as Consumer Finance Circular 90-1 and revised and reissued January 20, 2004.

Reference: §6.1-330.71 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-0703**  
**REBATE OF UNEARNED INSTALLMENT LOAN INTEREST BY BANKS**  
**RULE OF 78**

The following represents the Bureau's interpretation of Virginia Code §6.1-330.86, as it relates to banks, and the effect of the term "scheduled payment date" in the last paragraph of that Section. This is an administrative interpretation only, made in response to questions, and may not be considered binding by a court of law.

1.
  - (a) Section 6.1-330.85 relates to rebates of unearned interest on installment loans secured by subordinate mortgages, but specifically exempts certain types of institutions, including banks, from its terms.
  - (b) Section 6.1-330.89 requires lenders to rebate unearned interest, calculated according to §6.1-330.86, when payment of the balance of a defaulted installment loan is accelerated.
  - (c) Section 6.1-330.86 contains a formula for calculating rebates of unearned installment loan interest but does not say when it is to be used. I conclude, therefore, that banks are not required by law to use the definition in §6.1-330.86, except upon acceleration of a defaulted debt.
2. Section 6.1-330.86 could govern the rights of parties under a bank's installment loan contract, if the contract recited the terms of the section or incorporated them by reference. Further, a court or other authority might find, based on evidence, that the parties intended to be bound by all terms of the section.
3. Whenever, §6.1-330.84 is applicable, the Bureau will interpret the term "scheduled payment dates" in the final paragraph as monthly anniversary dates, rather than literally. This is consistent with what is seen as mere legislative endorsement of the practice of "rounding off" any part of a month to a whole month, so as not to require calculation of odd days interest. The use of "anniversary dates" rather than literal "scheduled" payment dates is apparently now the prevalent practice among banks and will not be criticized by the Bureau so long as it is applied consistently by a bank, without resort to literal "scheduled" payment dates when doing so would result in a smaller rebate.

Reissued by the Commissioner of Financial Institutions July 1, 1990. Original effective date: January 7, 1980, as Circular 1-80.

Reference: §§6.1-330.84, 6.1-330.85, 6.1-330.86 and 6.1-330.89 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-1601  
MORTGAGE BROKERS AS NAMED PAYEE ON  
MORTGAGE LOAN NOTES**

Section 6.1-409 of the Code of Virginia defines various terms used in the Virginia Mortgage Lender and Broker Act (the Act), including the terms “mortgage lender” and “mortgage broker”. The language used to define these two terms is intended to describe the separate functions performed in either line of business in connection with mortgage loan transactions. The distinction between these functions is reinforced by the prohibition, under §6.1-422(B)(3), against receipt of compensation for brokering a mortgage loan by the person who made the same loan.

It is the position of the Bureau of Financial Institutions that the payee named in a mortgage loan note is presumed to be a mortgage lender in that transaction. Otherwise, there would appear to be no legal consideration for a borrower’s promise to repay a third party who had made no loan to the borrower. The Bureau is informed, however, that some mortgage lenders require mortgage brokers to “close mortgage loans in their (the mortgage brokers’) name”, with the result that mortgage brokers are named as payee on mortgage loan notes and are identified as the creditor in such transactions.

Mortgage brokers participating in this practice in connection with more than three mortgage loans in any period of twelve consecutive months must obtain a mortgage lender license under the Act.

Revised and Reissued February 28, 1991, September 30, 2002, and July 21, 2004 as amended, by the Commissioner of Financial Institutions. Original effective date: March 15, 1990, as Mortgage Lender and Broker Circular 90-1.

Reference: §6.1-409 of the Code of Virginia.

**ADMINISTRATIVE LETTER BFI-AL-1603  
COMPENSATING, OR OFFERING TO COMPENSATE,  
UNLICENSED MORTGAGE BROKERS**

The Mortgage Lender and Broker Act, at Virginia Code §6.1-409, defines a “mortgage broker” as “...any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find mortgage loans for others.” Virginia Code §6.1-410 forbids engaging in business without a license, and Virginia Code §6.1-429 declares that any person not exempt from licensing who acts a mortgage broker without having obtained a license is guilty of a Class 6 felony.

It is the position of the Bureau of Financial Institutions that any “person” who, for compensation, refers individuals who are seeking a “mortgage loan” (as the terms “person” and “mortgage loan” are defined in the Act) to a lender or lenders is engaged in business as mortgage broker, and must be licensed unless exempt under Virginia Code §6.1-411. The identity of the person compensating the mortgage broker, and the form of compensation, do not affect the licensing requirement. When the Bureau has evidence that an unlicensed person is acting as a mortgage broker, appropriate action will be taken.

As the Bureau understands the criminal laws of Virginia, a person who is an accessory to the commission of a felony, or who solicits the commission of a felony, is subject to criminal liability. Lenders compensating, or offering to compensate, unlicensed mortgage brokers may, in certain circumstances, face criminal prosecution. When the Bureau has evidence that a lender has engaged in such activity, appropriate action will be taken.

The Bureau will provide confirmation, upon inquiry, of the current licensed or unlicensed status of any specific mortgage broker.

Issued by the Commissioner of Financial Institutions July 3, 1990, as Mortgage Lender & Broker Circular 90-2.

Reference: §6.1-409 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-1604**  
**FUNDS AVAILABLE TO LICENSED MORTGAGE LENDERS**  
**FOR BUSINESS OPERATION**

Virginia Code §6.1-415 provides, in part, that in order to qualify for a license to engage in business as a mortgage lender, an applicant must have at least \$200,000 available for the operation of the business. Further, Code §6.1-425 authorizes the State Corporation Commission to suspend or revoke a license to engage in business as a mortgage lender if it finds that circumstances or conditions exist which would constitute grounds for denial of a license. The Bureau of Financial Institutions concludes, therefore, that failure to maintain not less than \$200,000 continuously for the operation of business by a mortgage lender will be deemed to be grounds for license suspension or revocation.

The Mortgage Lender and Broker Act does not specify what is to be required or acceptable as evidence that an applicant for a Mortgage Lender's license or a licensee has \$200,000 available for business operation. For various reasons, it has been determined that (1) evidence of ownership of funds on deposit in a bank or other depository institution, (2) evidence of established lines of credit from a bank or other depository institution or (3) some combination of (1) and (2) will be acceptable.

Neither letters of credit nor lines of credit from sources other than a bank or other depository institution will satisfy this requirement.

Issued by the Commissioner of Financial Institutions March 21, 1991.

Reference: §§6.1-415 and 6.1-425 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-1605**  
**COMPENSATION OF UNLICENSED MORTGAGE BROKERS**

It has come to the Bureau's attention that some licensees under the Mortgage Lender and Broker Act (the Act) are compensating unlicensed persons for mortgage loan brokering and/or referrals. The Bureau considers any person making any such referral, by whatever means, for compensation to be engaged in business as a mortgage broker. Such persons are required to be licensed as mortgage brokers unless they are (1) within a class of persons explicitly exempt from licensing under the Act, or (2) a bona fide employee (pursuant to Internal Revenue Service guidelines) of the person compensating them.

The failure of a licensee to withhold taxes from compensation paid to such persons demonstrates that such persons are not bona fide employees of the licensee, but are independent contractors. No explicit statutory exemption has been found applicable to such persons. Therefore, licensees compensating unlicensed mortgage brokers in this fashion are cautioned that they are subject to (1) license revocation, (2) criminal referral to local prosecuting authorities, and (3) reporting of such practices to taxing authorities.

Issued by the Commissioner of Financial Institutions August 26, 1991, revised and reissued September 30, 2002.

Reference: §6.1-429 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-1606  
CHARGING “ASSIGNMENT FEES” TO BORROWERS**

Virginia Code §6.1-330.70, subsection A, provides in relevant part that a lender may require a borrower to pay “...the reasonable and necessary charges in connection with making...” certain real estate-secured loans, notably first mortgage loans. (Emphasis added.) Such charges may include specifically the cost of title examination, title insurance, recording and filing fees, taxes, insurance, appraisals, credit reports, surveys, drawing of papers and closing the loan.

An “assignment fee”, i.e., a fee charged a borrower by a lender to cover the cost of recording an assignment of a note and deed of trust to a purchaser of the loan, is not a charge incurred “in connection with making” the loan. Such fees are not incident to the relationship between lender and borrower, but rather arise out of the subsequent transfer of a loan from the lender to a third-party purchaser. It is concluded, accordingly, that such fees may not lawfully be charged, whether or not borrowers agree to pay them.

The charging of such an assignment fee, however denominated, will be cited as a violation of law during examinations of licensees under the Mortgage Lender and Broker Act. Overcharges resulting from violations of this Letter should be reimbursed to the borrower. Violations of this law may be grounds for license revocation under Va. Code §6.1-425, and may also be referred to the Attorney General, pursuant to Code §6.1-430.

Originally issued by the Commissioner of Financial Institutions July 2, 1993. Revised and reissued September 30, 2002. This ruling confirms a position taken in a memorandum to licensees from Assistant Commissioner E. J. Face, Jr., dated January 11, 1993, which is the effective date of the ruling.

Reference: Va. Code §6.1-330.70

**ADMINISTRATIVE LETTER BFI-AL-1607**  
**FEES CHARGED BY MORTGAGE BROKERS**

In some instances, mortgage broker licensees have stated their fees, in agreements signed by borrowers, in language such as “not to exceed” followed by some dollar amount or percentage of the loan amount. Such language lacks the specificity contemplated by Virginia Code §6.1-422(B)(4).

Mortgage broker licensees are cautioned that fees are to be stated as a specified dollar amount or a specified percentage of the loan amount, in agreements signed by borrowers. Failure to do so shall be treated as a violation of the cited statute.

Issued by the Commissioner of Financial Institutions December 1, 1995.

Reference: §6.1-422(B)(4) of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-1609**  
**MINIMUM MORTGAGE LENDER AND BROKER SURETY BOND**

Section 6.1-413 of the Code of Virginia requires that applicants for licenses and licensees under the Virginia Mortgage Lender and Broker Act file with the Commission and maintain in continuous effect a bond with corporate surety in the sum of \$5,000, or such greater sum as the Commissioner of Financial Institutions may require. This statute was amended by Chapter 511 of the 2001 Acts of the Virginia General Assembly, increasing the minimum bond requirement from \$5,000 to \$25,000, effective July 1, 2001.

After consultation with the staff of the Bureau of Financial Institutions (“Bureau”), and the Commission, it is directed that effective July 1, 2001, the minimum surety bond for mortgage brokers is \$25,000, and the minimum surety bond for mortgage lenders and mortgage lender/brokers is \$50,000. Applicants for licenses and licensees are advised promptly to file or arrange for filing with the Bureau surety bonds or riders in compliance with this Ruling.

Issued by the Commissioner of Financial Institutions May 22, 2001.

Reference: §6.1-413 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-1610**  
**PREPAYMENT PENALTIES IN ALTERNATIVE MORTGAGE TRANSACTIONS**

Prior to December 18, 2003, the Bureau was subject to an injunction entered by the United States District Court for the Eastern District of Virginia, Richmond Division. That injunction barred the Bureau from enforcing Virginia law limits on prepayment penalties in “alternative mortgage transactions” (AMTs) entered into by non-depository housing creditors. On December 18, 2003, the parties to the case in which the injunction was issued appeared before the Court to be heard on certain motions.

After argument the Court ruled that the Bureau was not barred from enforcing Virginia law prepayment penalty limits with respect to AMTs entered into on or after July 1, 2003, the effective date of revised regulations of the Office of Thrift Supervision. Therefore, the Bureau will resume enforcement of those laws in connection with AMTs closed on or after July 1, 2003 by mortgage lenders licensed under the Virginia Mortgage Lender and Broker Act.

Issued by the Commissioner of Financial Institutions on February 18, 2004

Reference: §§6.1-330.83 and 6.1-330.85 of the Code of Virginia

**ADMINISTRATIVE LETTER BFI-AL-1801**  
**PROHIBITION ON ADDITIONAL SECURITY FOR PAYDAY LOANS**

Section 6.1-459 (10) of the Code of Virginia provides that “a licensee shall not take an interest in any property other than a check payable to the licensee as security for a loan.” Furthermore, 10 VAC 5-200-70 C states that “a licensee shall not accept or require an allotment of military pay or any authorization of electronic funds transfer as security for repayment of a loan.”

Based on the above-referenced statute and regulation, it is the position of the Bureau of Financial Institutions that a payday lender licensee is prohibited from requiring or accepting from a borrower any pre-authorization to debit or transfer funds out of the borrower's deposit account (i.e., via EFT, ACH, or other means) in order to collect any amount that will or may become due to the payday lender licensee, including the amount of the borrower's check or any additional charges allowed under § 6.1-461 of the Code of Virginia. It is the Bureau's view that accepting such an authorization in advance of amounts becoming due constitutes impermissible additional security in violation of both § 6.1-459 (10) of the Code of Virginia and 10 VAC 5-200-70 C. Taking an interest in the borrower's deposit account (in the form of a pre-authorization to debit or transfer funds out of the account) increases the likelihood that the loan will be repaid or that the licensee will recover amounts that will or may later become due. As such, it constitutes taking additional “security” for the payday loan and is prohibited.

Issued by the Commissioner of Financial Institutions February 24, 2004, revised and reissued August 8, 2005.

Reference: § 6.1-459 of the Code of Virginia